

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KATHY MACAJOUX,

Plaintiff,

v.

HEALTHCARE REVENUE RECOVERY
GROUP, LLC,

Defendant.

Civil Action No.
1:22-cv-02588-SDG

OPINION & ORDER

This matter is before the Court on Plaintiff Kathy Macajoux's Notice of Voluntary Dismissal [ECF 18]. For the following reasons, Macajoux's dismissal is **GRANTED**.

On June 29, 2022, Macajoux filed suit against Defendant Healthcare Revenue Recovery Group, LLC (HRRG).¹ Approximately one month later, HRRG appeared and answered Macajoux's complaint.² On August 9, 2022, United States Magistrate Judge J. Elizabeth McBath entered a scheduling order directing the parties to complete discovery by December 27, 2022.³ After the close of discovery, HRRG

¹ ECF 1.

² ECF 4.

³ ECF 9.

timely filed a motion for summary judgment.⁴ Macajoux neither responded to HRRG's motion nor cross-moved for summary judgment; rather, on February 26, 2023, she filed a notice of voluntary dismissal indicating her intent that the case be dismissed with prejudice.⁵ The notice of voluntary dismissal is the subject of this Order.

Rule 41 of the Federal Rules of Civil Procedure provides that a plaintiff may voluntarily dismiss her case without a court order before the opposing party serves either an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). HRRG has filed both an answer and a motion for summary judgment, and it has not stipulated to dismissal. Thus, this action may be dismissed at Macajoux's request "only by court order, on terms that the court considers proper." *Id.* 41(a)(2).

"In most cases, a voluntary dismissal should be granted unless the defendant will suffer clear legal prejudice, *other than the mere prospect of a subsequent lawsuit*, as a result. The crucial question to be determined is, would the defendant lose any substantial right by the dismissal." *Pontenberg v. Boston Scientific Corp.*, 252 F.3d 1253, 1255 (11th Cir. 2001) (cleaned up); *see also id.* at 1258

⁴ ECF 17.

⁵ ECF 18.


(declining to adopt “a per se rule that the pendency of a summary judgment motion precludes a district court from granting a Rule 41(a)(2) voluntary dismissal without prejudice”). In crafting the terms of a dismissal under Rule 41(a)(2), the Court has wide latitude. *McCants v. Ford Motor Co.*, 781 F.2d 855, 857 (11th Cir. 1986).

The Court has reviewed Macajoux’s complaint and HRRG’s answer and motion for summary judgment, and discerns no substantial right of HRRG’s at stake if it were to grant Macajoux’s request to dismiss the case with prejudice. In light of the Eleventh Circuit’s pronouncement in *Pontenberg*, dismissal appears entirely appropriate. *See* 252 F.3d at 1256 (“Neither the fact that the litigation has proceeded to the summary judgment stage nor the fact that the plaintiff’s attorney has been negligent in prosecuting the case, alone or together, conclusively or per se establishes plain legal prejudice requiring the denial of a motion to [voluntarily] dismiss.”). The Court regrets that Macajoux’s notice of dismissal immediately followed HRRG’s summary judgment motion and appears to be a thinly veiled attempt to avoid an adverse ruling; however, “it is clear under *McCants* . . . that the mere attempt to avoid an adverse summary judgment ruling in and of itself, particularly where there is no evidence of bad faith, does not constitute plain legal

prejudice.” *Id.* at 1258. Thus, the Court grants Macajoux’s dismissal with prejudice as requested.

Macajoux’s dismissal request is **GRANTED** [ECF 18], and the case is **DISMISSED WITH PREJUDICE**. Macajoux is **ADVISED** that any attempt to refile any action based on or including the same claims against HRRG shall entitle HRRG to all of the fees and costs it incurred defending this action. Fed. R. Civ. P. 41(d). The Clerk is **DIRECTED** to close the case.

SO ORDERED this 26th day of June, 2023.



Steven D. Grimberg
United States District Court Judge